IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

Narendra Kumar Anchalia vs. State of Rajasthan & Ors.
(S.B.C.Writ Petition No.2935/01)

Date of Order :- 16th October, 2006.

PRESENT

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr. Manoj Joshi, Advocate for the petitioner.
Mr.Rameshwar Dave, Dy.Government Advoate for the State.

In this writ petition, the petitioner has challenged the order dated 19.1.2001 whereby he was compulsorily retired from service by the respondents and has prayed for a direction to the respondents to re-instate him back in service with all consequential benefits.

The petitioner was initially appointed on the post of Computer in the Department of Mines & Geology at Udaipur by order dated 15th March, 1983. He has produced a certificate

issued to him by the Additional Director(Admn.), Department of Mines and Geology, Udaipur on 26.2.2001 stating that therein that no enquiry was pending against him. However, the respondents while invoking Rule 53(1) of the Rajasthan Civil Services(Pension) Rules, 1996 (in short "the Rules of 1996") by order dated 19.1.2001 compulsorily retired the petitioner in public interest upon his completing 15 years of service. The petitioner submitted a representation to the respondents on 19.3.2001 and thereafter filed the present writ petition.

In the reply, it has been stated by the respondents that the certificate dated 26.2.2001 was issued by the Additional Director(Admn.) for the purpose of sanctioning pension to the petitioner. In fact, the services rendered by the petitioner were not satisfactory inasmuch as he was awarded various penalties and issued warnings several times. The respondents have placed on record the copy of the order dated 23.3.1996 whereby the petitioner was awarded penalty of stoppage of one grade increment without cumulative effect for wilful absence from duty from 18.11.1995 for quite sometime.

Another order dated 1.1.1997 has also been placed on record by which the petitioner was awarded penalty of stoppage of one grade increment without cumulative effect and this time also on the charges of wilful absence of the petitioner for number of days. Yet another penalty order which is again dated 1.1.1997 has been produced whereunder the petitioner was awarded penalty of stoppage of one grade increment without cumulative effect on charges of late arrival on duty and absence from duty and lack of devotion to the duty. The respondents have also placed on record a copy of the order dated 3.6.2000 whereby penalty of stoppage of two grade increments without cumulative effect was imposed on the petitioner and this time again on the charges that he dis-appeared from duty without any leave and remained absent for number for days. In fact, the respondents have placed on record a chart giving details of the days on which the petitioner remained absent. This chart indicates the number of days when the petitioner continuously remained absent on number of occasions in different spells i.e. for 25, 28,37,38 , 56, 68, 108, 111, and 163 days respectively leaving aside the

period during which he remained absent for lesser number of days. In this manner, the petitioner had remained absent for 761 days during his service career between 23.10.1988 and 26.6.1988. The respondents have therefore stated that on recommendation of the screening and review committee, he was compulsorily retired by invoking Rule 53(1) of the Rules of 1996 because the services of the petitioner was wholly unsatisfactory. It has therefore been prayed that the writ petition may be dismissed.

I have heard Mr.Manoj Joshi, learned counsel for the petitioner and Mr. Rameshwar Dave, learned Dy. Government Advocate and perused the record.

Mr. Manoj Joshi, learned counsel for the petitioner argued that there was no element of public interest in the compulsorily retirement of the petitioner inasmuch as he has been retired at a very young age of 42 years. He has argued that services rendered by the petitioner were satisfactory and his behaviour with the officers was very good. The petitioner

was not given any opportunity of hearing before the order of voluntary retirement was passed. Learned counsel for the petitioner relied upon a judgment of this Court in State of Rajasthan & Ors. vs. RCSA Tribunal & Inder Kumar Singh, 2005 (8) RDD p.3056 and on that basis argued that record of the petitioner's service career was not examined by the screening and review committee in totality and therefore the order of his compulsory retirement should be quashed and the writ petition be allowed.

On the other hand, Mr. Rameshwar Dave, learned Dy. Government Advocate argued that there were number of adversities in the service record of the petitioner which have been detailed out in reply to the writ petition. He was awarded as many as four penalties and was given number of warnings to remain punctual in the office and show devotion to the duties. The petitioner was however always negligent towards his duties and had been frequently and habitually absenting from duty so much so that during the period from 23.10.1988 to 26.6.1988 he remained absent for a total period of 761

days, details of which have been given in Annex. R./4. He further argued that entire record was placed before the Screening committee as also Review Committee and it was on their recommendations that he was compulsorily retired.

I have given my thoughtful consideration to the rival arguments of the learned counsels of the parties and perused the record.

Having scanned four penalty orders passed against the petitioner, I find that the charges against the petitioner mostly pertain to his wilful absence from duty and lack of devotion to duty. The petitioner remained absent willfully and such absence continued from duty on number of occasions. Sometimes he turned up on duty late and at other times, he left the office quite early. The respondents have occasionally been calling for his explanation and on at least four occasions he was subjected to disciplinary proceedings under Rule 17 of the Rules of 1996. In fact, the chart produced by the respondents giving details of the absence from duties reflects

that during the period starting from 3.10.1988 and ending on 26.6.1999 the petitioner remained absent from duty on as many as 761 days. Sometimes, this absence was prolonged even up to 56, 68, 108 , 11 and 163 days leaving aside the length of absence for lesser number of days. This chart reflects a very poor picture about the dedication which the petitioner has shown to his duties. One wonders that if the petitioner had remained absent for so long and so frequently, why the respondents did not proceed against him in a major penalty disciplinary proceedings. However now when the respondents on the recommendations of the screening and review committee found that petitioner had become a liability to the service and become a deadwood to be chopped off, I do not feel persuaded to accept the argument of the learned counsel for the petitioner that there was no material with the respondents to arrive at such a satisfaction. The judgment relied upon by the learned counsel for the petitioner in State vs. R.C.S.A.T. & Inder Kumar Singh(supra) turned out on its own fact where the State Government had challenged the order of the Tribunal and on the facts of that case it was held

that the government servant concerned in that case had unblemished record for 33 years except for one year i.e. 1987-88 and had throughout earned fairly good appraisal reports and therefore the order of the Tribunal declaring such compulsory retirement to be illegal was upheld. In the present case however the situation is altogether different.

In the facts of the case, I do not find any error of law in subjective satisfaction arrived at by the authorities concerned to compulsory retire the petitioner.

In the result, the writ petition fails and is hereby dismissed . There shall be no order as to costs.

(MOHAMMAD RAFIQ),J.